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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,964	12/12/2003	Wade Miley		8732

7590 02/18/2005
Wade Miley
8464 Loretto Ave.
Cotati, CA 94931

EXAMINER

REESE, DAVID C

ART UNIT PAPER NUMBER

3677

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,964

Applicant(s)

MILEY, WADE

Examiner

David C. Reese

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

[1] Claims 1-3 are pending.

Drawings

[2] The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the terms first wall, second wall, and third wall thickness must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

[3] The abstract of the disclosure is objected to because of a slight grammatical error in the last sentence, “A preferred embodiment includes the dimensions of the band can be...” Recommended change: “A preferred embodiment that includes dimensions of the band that can be...” Correction is required. See MPEP § 608.01(b).

[4] The disclosure is objected to because of the following informalities:

Slight grammatical and formatting issues throughout the application. For example, in the brief summary of the invention, “object..” should be “object.” In the detailed description of the preferred embodiments, “...in nature as more clearly...” should be “...in nature as more clearly...”

Also, “...or the like is place at the...” should be “...or the like is placed at the...” Examiner notes that the above are just a few of the grammatical and formatting issues that need to be resolved within the entire application. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

[5] The disclosure is also objected to because of the following informalities:

In certain places throughout the specification words become confusing and are interchanged with incorrect information. Take for example, the last line on page 3 of the specification, stating "bottom portion of approximately seventy degrees..." Now on page 4 of the specification, note on the third to last line, "at the middle of said eighty degree portion..." This ambiguous information is continued throughout the detailed description of the preferred embodiment.

Continuing, in the brief summary of the invention, where the description is written using the same language as that found in the claims, it is noted that this type of terminology is not kept true during the detailed description of the preferred embodiment. For example, on page 3, third line from the bottom, it is stated, "a maximum first wall thickness of approximately one and seven tenths of a millimeter..." In the detailed description of the invention, however, the first wall is not referred to again or either is the one and seven tenths of a millimeter, which is also in Claim 1, causing one example of confusion and indefiniteness with regard to the varying dimensions when addressing the claimed invention. It appears as if the brief summary is more specific than that of the detailed description of the invention. This should not be the case, as the detailed description should provide a more in-depth analysis of the diagrams making it easy for one skilled in the art to address the different dimensions of certain aspects of the claimed ring with ease.

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[6] The disclosure is also objected to because of the following informalities:

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: in the detailed description of the preferred embodiment of the invention, the terms first wall, second wall, and third wall thickness or band portions are not described. For proper definiteness, these terms must be addressed and their relationship to the diagrams must be expressed precisely.

Also, the last line of Claim 1 refers to "approximately five and two tenths of a millimeter," but in the specification, however, it is stated in the detailed description however that it is approximately five and one tenth of a millimeter. The same situation arises with the "approximately seventy degrees" as in the specification it is addressed as both seventy and eighty degrees.

Also, in Claim 1, the paragraph beginning with, "said first, second, and third...of said band wall to a minimum..." is considered indefinite because in the specification and diagrams it appears as if the area surround the convex cross section has a minimum at the center and maximum at the ends, not the other way around as claimed.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

[7] The claimed invention is directed to non-statutory subject matter. In Claim 1, it is stated, "abuts adjacent fingers..." Claiming parts of the body is considered directed toward non-statutory subject matter. Consider, "...for abutting adjacent fingers..."

Claim Rejections - 35 USC § 112

[8] The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

[9] Claims 1-2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "type" in claim 1 is a relative term, which renders the claim indefinite. The term "type" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 2 recites the limitation "said dimensions" in Claim 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

[10] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levsunov in view of design choice.

Levsunov teaches of a ornamental defensive ring that is designed to encircle the finger of a wearer, have a circular inside diameter, and a maximum first thickness, a bottom portion, a second wall and third wall thickness, both able to occur at the end of the bottom portion. Levsunov also teaches that the sides of the ring heading towards its bottom are not parallel, but are tapered. This is all shown in Fig. 2 of Levsunov. As far as the exact dimensions of the ring are concerned, they are considered an example of design choice as explained below.

It would have been an obvious matter of design choice to modify the ring by Levsunov, since applicant has not disclosed that exact dimensions of thickness for example solves any stated problem or is of any particular purpose and it appears that other varying thicknesses would perform equally well and as also stated by applicant, "it is to be understood that these dimensions could be scaled up or down depending on the overall size of the ring."

Claims 2 and 3 are rejected as Lesunov discloses the claimed invention except for stating that exact dimensions of certain aspects band can be altered. It would have

been obvious to one having ordinary skill in the art at the time of the invention was made to alter such a band for different ring sizes, for example, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

Conclusion

[11] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited further to show the state of the art with respect to this particular type of ring; as well as their extreme relevance to the current application: Niven et al., 2,027,060; Collins et al., 4,713,947; Zix, 1,303,530; Shields, 2,073,228; Shields, 2,084,008; Nevrous, D243,359; Wideman, 4,573,331; Pagani, 5,275,019; Miller, 6,003,334; Wideman, 4,745,779;


[12] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is 703-305-4805. The examiner can normally be reached on 7:30 am - 5:00 pm M-Th, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,
David Reese
Examiner
Art Unit 3677



ROBERT SANDY
PRIMARY EXAMINER